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| 26646 | 7590 | 10/31/2007 | EXAMINER | |
| KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004 | | | WILLIAMS, THOMAS J | |
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/965,776

Filing Date: September 27, 2001

Appellant(s): BECK ET AL.

Michelle Carniaux
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 20, 2007 appealing from the Office action
mailed October 10, 2003.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

With regards to the rejection in view of Yano, the appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection in view of Schnuck et al. has been withdrawn by the examiner.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,332,654 B1

Yano

12-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5, 7, 8, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,332,654 to Yano.

Re-claim 1, Yano discloses in figures 8-12 a method of controlling a wheel brake of a vehicle, an electrically operated actuator (pump 15) is assigned to the wheel brake 6 and is driven by an actuation signal (from controller 10) as a function of a setpoint to generate a braking force and a braking pressure, the method comprises: determining a desired braking input based upon pedal actuation (as sensed by switch 12) and a control system 10, the target pressure is set by the controller in step 904 (figure 9) and is further detailed in figure 11, also see column 10 lines 17-24; the target brake pressure is applied as a function of the desired braking input, as determined by the controller from the sensed level a brake pedal actuation from the brake pedal sensor 12; the braking pressure is

limited to a maximal value ZPttarget when the vehicle is at a standstill, see column 10 lines 20-24.

Re-claim 3, the braking pressure, during the current standstill operation, is limited to a predefined value, which is the maximal value ZPttarget.

Re-claim 5, a limit value is increased as needed, see column 26 lines 28-31, for instance during periods when it is determined that the maximal value is insufficient to maintain the vehicle at a standstill. This is consistent with the instant invention, wherein the predefined limit value PRADSOLLGRENZ (interpreted as the maximal value) is increased as needed, see page 10 lines 1-21.

Re-claim 7, valve 8 is driven to connect a first (master cylinder side) and a second (wheel brake side) pressure control circuit; the pressure in the second pressure circuit is regulated by pump 15.

Re-claim 8, a limit value is based upon at least one wheel not braked, as such any vehicle speed value detected by the controller while the vehicle is in a standstill condition is not corrupted by a braking pressure at that wheel.

Re-claim 10, Yano discloses a device for controlling a wheel brake, comprising: a control unit 10 that controls at least one actuator (such as the pump) assigned to the wheel brake; the control unit is operable to control as a function of a desired braking (ZPttarget value) derived from an operation of a brake pedal (as sensed by switch 12) and a control system (controller 10), and converting a change of operation into an actuation quantity (such as when a deviation is determined between the target value and the actual value); the control unit is operable to limit actuation of the pump in at least one predefined

situation (for instance, see step 1206, a pressure increasing situation while the vehicle is at a standstill), the desired braking is limited to a maximal value ZP_{target} ; the predefined operation situation includes a standstill situation of the vehicle.

(10) Response to Argument

The applicant's arguments appear to focus on the recitation "the braking pressure is limited to a maximal value", which appears in the disclosure as addressing the maximum pressure in an electro-hydraulic brake system, such as 150 bar (see page 7 lines 2-3). However, it is unclear what this system condition has to do with the claimed invention. All brake systems, including the system of Yano, will have a maximum safe pressure, or maximal pressure, to which they can operate.

It is the position of the examiner that a more appropriate reading of "a maximal pressure" is one that is the upper limit of desired pressure as set by the operator at the time of standstill initiation. As such the target value in Yano is merely interpreted as a brake pressure value determined in part by the degree of pedal operation, and is a maximal value that the wheel cylinder pressure should be maintained to by the control unit. Thus, the examiner broadly interprets the recitation "a maximal value" as a maximum desired brake pressure value at the time of vehicle standstill, and is not interpreted as some "maximum" value never to be exceeded during the existence of the vehicle, since this is not specifically claimed. The phrase "a maximal value" can be construed as meaning any desired set value not to be exceeded during the present vehicle standstill operation. It should be noted that claim 5 then appears to increase the maximal value by reciting "increasing a limit value". Since the recitation "a maximal value" can

be interpreted as a limit value, it stands to reason that the artisan can reasonably interpret the limitations of claim 5 as modifying the limitations of claim 1, and as such modify the maximal value by increasing said maximal value as needed. This position appears to be supported by the disclosure, wherein the predefined limit value (broadly interpreted as a maximal value as set by the operator) PRADSOLLGRENZ is increased if it determined that the vehicle is rolling, possibly due to an insufficient brake pressure, see column 10 lines 17-21. As such it is the opinion of the examiner that the arguments set forth in the Appeal Brief are more specific than the claim language, since the disclosure clearly provides a variety of possible interpretations for the recited claims.

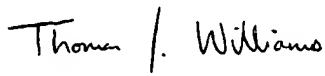
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Thomas J. Williams


10-17-07

Conferees:

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